

Order

Entered: June 17, 2004

Michigan Supreme Court Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

123237

C.C. MID WEST, INC.,
Plaintiff-Appellant,

v

SC: 123237
COA: 213386
Oakland CC: 97-550272-NZ

HOWARD McDOUGALL, ROBERT J. BAKER,
ARTHUR H. BUNTE, JR., R.V. PULLIAM, SR.,
JOE ORRIE, JERRY YOUNGER, GEORGE J.
WESTLEY, RAY CASH, and RONALD J.
KUBALANZA,
Defendants-Appellees.

On order of the Court, leave to appeal having been granted, and the briefs and oral arguments of the parties having been considered by the Court, we VACATE the January 17, 2003 judgment of the Court of Appeals and REMAND this case to the Oakland Circuit Court for further development of the factual record through discovery or, if appropriate, for amendment of the pleadings. In considering a motion challenging jurisdiction under MCR 2.116(C)(4), a court must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate that the court lacks subject matter jurisdiction. MCR 2.116(G)(5). While defendants' statements about self-contribution may, in the abstract, be related to their pension fund duties, further factual development may show that they were not. While we are not by this order endorsing a particular definition of "relate[s] to" for the purpose of preemption under the Employee Retirement Income Security Act (ERISA), 29 USC § 1001 *et seq*, we believe further factual development will assist the circuit court in this matter. We therefore remand for further factual development. For instance, it is not apparent from the pleadings, depositions, admissions, and documentary evidence whether the plan administrators had any duty to communicate information to the former employees because it is impossible to determine from the available information whether the former employees remained eligible to self-contribute at the time the challenged communications were made. This may be a threshold issue bearing on whether the fiduciaries' activities were protected under ERISA's preemption provisions. See, e.g., *Mackey v Lanier Collection Agency & Service, Inc.*, 486 US 825 (1988).

We do not retain jurisdiction.

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I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 17, 2004 Corbin R. Davis

Clerk